

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Rulemaking to Prohibit	)	WC Docket No. 11-42
In-Person Distribution of Handsets	)	
to Prospective Lifeline Customers	)	
	)	
Lifeline and Link Up Reform	)	WC Docket No. 11-42
and Modernization	)	
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45
Service	)	

**REPLY COMMENTS OF ABSOLUTE MOBILE, ASSIST WIRELESS, BLUE JAY WIRELESS, BOOMERANG WIRELESS, EASY WIRELESS, GLOBAL CONNECTION, I-WIRELESS AND TELRITE**

Absolute Mobile, Assist Wireless, Blue Jay Wireless, Boomerang Wireless, Easy Wireless, Global Connection, i-wireless and Telrite (the “Joint Commenters”),<sup>1</sup> by and through their undersigned counsel and pursuant to the Commission’s *Public Notice* in the above-captioned proceeding,<sup>2</sup> respectfully submit these reply comments in response to TracFone Wireless, Inc.’s (“TracFone’s”) Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers (“TracFone Petition”).<sup>3</sup>

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<sup>1</sup> This coalition of joint commenters is comprised of Absolute Mobile, Assist Wireless, Blue Jay Wireless, Boomerang Wireless, Easy Wireless, Global Connection, i-wireless and Telrite, competitive eligible telecommunications carriers (“ETCs”) that provide pre-paid wireless service to eligible low-income consumers in numerous states.

<sup>2</sup> See *Wireline Competition Bureau Seeks Comment on TracFone’s Petition to Amend Lifeline Rules to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers*, WC Docket No. 11-42, Public Notice, DA 13-1109 (rel. May 16, 2013).

<sup>3</sup> See *Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers; Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., CC Docket No. 96-45, Petition for Rulemaking, (May 13, 2013) (“TracFone Petition”).

**I. With Few Exceptions, Commenters Uniformly Called on the Commission to Reject TracFone’s Proposal to Eliminate In-Person Handset Distribution.**

In their initial comments, the Joint Commenters strongly opposed TracFone’s proposal to ban in-person handset distribution. The other comments filed demonstrate that this position is widely shared. Many commenters agreed with the view that TracFone failed to provide data or evidence to support its conclusion that banning in-person handset distribution would achieve its twin goals of eliminating waste, fraud and abuse in the program and improving the perception of the Lifeline program.<sup>4</sup> Indeed, TracFone “offer[ed] no evidence that fraud actually occurs in connection with in-person distribution of handsets,” and did “not even attempt to demonstrate that fair and compliant review of applications and documentation in connection with in-person distribution of handsets is any different than review of applications received via internet or fax, or through a call center, with distribution of handsets via mail.”<sup>5</sup>

Further, the California Public Utilities Commission (“CAPUC”) correctly noted that the distribution of free handsets manifestly is *not* the root of Lifeline fraud.<sup>6</sup> Rather, the core issue appears to be inadequate supervision and training, which seems to have led to a number of well-publicized news stories featuring in-person handset delivery—as well as delivery by mail—that have contributed to negative press coverage of the program. As COMPTTEL rightly

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<sup>4</sup> See, e.g., Comments of Budget Prepay, Inc. (June 17, 2013) (“Budget Comments”) at 2-3; Initial Comments of National ALEC Association/Prepaid Communications Association (“NALA/PCA”) to the Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers (June 17, 2013) (“NALA/PCA Comments”) at 4-6 (“TracFone’s Petition fails to offer any justification of the need for such prohibition or explanation of how prohibition of in-person distribution of handsets would prevent waste, fraud, and abuse”); Comments of Q Link Wireless LLC (June 17, 2013) (“Q Link Comments”) at 3-4; Comments of TerraCom, Inc. (June 17, 2013) (“TerraCom Comments”) at 3 (“[T]he FCC cannot make broad rules based upon nothing more than the unsupported assumptions of [a] petitioner”).

<sup>5</sup> See NALA/PCA Comments at 4-5.

<sup>6</sup> See Comments of the California Public Utilities Commission and the People of the State of California on TracFone Wireless, Inc.’s Petition for Rulemaking (June 17, 2013) (“CAPUC Comments”) at 5 (“The problem is not the distribution of free handsets, but the failure of some service providers to perform the eligibility checks as required under the existing rules.”).

explained, “by TracFone’s own admission, the issue that critics have raised is not the in-person distribution of handsets, but the seeming failure of certain providers to verify a consumer’s eligibility for Lifeline benefits.”<sup>7</sup>

In addition, the Joint Commenters agree with the CAPUC and others that the FCC’s upcoming database solutions will resolve most issues that have been raised about the Lifeline program.<sup>8</sup> These databases are scheduled to come online shortly. As a result, we agree with those commenters who suggest that the Commission should continue to keep its focus on implementing databases, which will achieve the Commission’s goals (and TracFone’s purported goals) without leveling undue harm on consumers and service providers alike.<sup>9</sup>

## **II. Support for TracFone’s Proposal Mirrored the Petition’s Rhetoric Without Addressing the Fact that Its Adoption Would Be Detrimental to the Lifeline Program and Consumers.**

The TracFone proposal found scant support among commenters. Tellingly, the few commenters filing in support of TracFone’s proposal did little more than vote—none could explain why additional delay was required after in-person verification of eligibility.<sup>10</sup> Moreover, no commenter supporting TracFone’s position addressed the potential for fraud that arises from an all-mail delivery process or an Internet-based distribution scheme, both of which lack the face-to-face identity check component present in the in-person distribution approach. Even those

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<sup>7</sup> COMPTEL’s Opposition to TracFone’s Petition for Rulemaking (June 17, 2013) (“COMPTEL Comments”) at 3.

<sup>8</sup> See CAPUC Comments at 5 (“Records retention, combined with the identity verification in the FCC’s National Lifeline Accountability Database, is sufficient to address the issue of improper or inadequate eligibility documentation.”).

<sup>9</sup> See Comments of the United States Telecom Association (June 17, 2013) at 3; Budget Comments at 7-8; COMPTEL Comments at 5-6; General Communication, Inc.’s Opposition to TracFone’s Petition for Rulemaking (June 17, 2013) (“GCI Comments”) at 7.

<sup>10</sup> See Comments of the Community Action Partnership, Consumer Action, Maryland CASH Campaign, the National Association of American Veterans, Inc., the National Consumers League (June 17, 2013); Comments of Various Public Service Commissioners (June 17, 2013); Comments of the National Grange (June 17, 2013); Comments of the Free State Foundation (June 17, 2013).

state commissioners who supported TracFone’s proposal described it as an interim measure pending National Lifeline Accountability Database (“NLAD”) implementation.<sup>11</sup>

Moreover, many commenters shared our view that in-person handset distribution provides an essential means of reaching low-income populations not easily reached through retail-, phone- or Internet-based enrollment platforms.<sup>12</sup> Indeed, as both the Navajo Nation and Smith Bagley noted, TracFone’s proposal would have an acute and disastrous effect on the ability of eligible tribal residents to obtain Lifeline service.<sup>13</sup>

Finally, the Commission’s recently issued *June 2013 Lifeline Reform Order* effectively moots TracFone’s core concern that in-person handset distribution promotes fraud based on the purported inability of ETCs to verify subscriber eligibility before distributing the handsets.<sup>14</sup> In the *June 2013 Lifeline Reform Order*, the Commission made it entirely clear that “ETCs must make the required determination of eligibility ‘prior to enrolling a new subscriber in Lifeline.’”<sup>15</sup> Furthermore, “[b]ecause the determination of eligibility must be made before the enrollment process is completed, it also must occur before the ETC may activate any phone that

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<sup>11</sup> See Comments of Various State Commissioners at 2.

<sup>12</sup> See COMPTTEL Comments at 6-9 (describing the benefits of in-person distribution to victims of natural disasters); GCI Comments at 3-5 (describing the necessity of in-person distribution to reach eligible customers in Alaska); Comments of the Navajo Nation Telecommunications Regulatory Commission (NNTRC) in Response to TracFone’s Petition and Nexus Communications’ *Ex Parte* Submission (June 17, 2013) (“Navajo Nation Comments”) at 4-6 (“Navajo culture revolves around personal interaction, and most would shy away from offers to ‘sign up today and get a phone in the mail.’ Not only is that impersonal, but with mail delivery unavailable in some areas of the reservation, and unreliable in others, few Navajos would trust that their phones would ever get to them . . . .”); Q Link Comments at 6-7 (describing the benefits of in-person enrollments for “transient enrollee[s] living at temporary addresses”); Comments of Smith Bagley, Inc. (June 17, 2013) at 4 (noting that “TracFone’s proposal would greatly limit many tribal citizens’ ability to receive phone service”).

<sup>13</sup> See Navajo Nation Comments at 4-6; Smith Bagley Comments at 4.

<sup>14</sup> See TracFone Petition at 6.

<sup>15</sup> *Lifeline and Link Up Modernization and Reform*, WC Docket No. 11-42, Order, DA-13-1441 (rel. June 25, 2013) (“*June 2013 Lifeline Reform Order*”) ¶ 5.

the ETC indicates will be used for Lifeline service.”<sup>16</sup> As such, the Commission has now addressed and resolved the foundational concern underlying TracFone’s instant petition. Therefore, the Commission need not—and should not—adopt TracFone’s proposed ban on in-person handset distribution.

### **III. Nexus’s Proposals to Restrict In-Person Handset Distribution and to Impose a Lifeline Compliance Bond Are Similarly Misguided and Should Be Rejected.**

The Joint Commenters agree with Nexus Communications, Inc.’s (“Nexus”) statement that TracFone’s petition is overbroad in scope, unnecessary to achieve the Commission’s goals, violative of important Constitutional rights and harmful to Lifeline subscribers. Moreover, we strongly agree with Nexus and TracFone that ETCs should be required to retain copies of proof of eligibility documentation. The Joint Commenters cannot agree, however, with Nexus’s proposals to ban distribution of Lifeline-supported handsets from temporary structures or to require that ETCs post a Lifeline compliance bond with the Commission.

First, whether the agents are located at a tent, in a church parking lot, or in a brick-and-mortar store is irrelevant; it is up to each ETC to ensure full compliance with the Commission’s rules. Second, Nexus’s argument that somehow the reputational concerns of third-party retailers will keep agents from breaking the rules misses the mark—it is the ETC that has its reputation and business on the line, just as it is the ETC that must comply with the FCC’s Lifeline rules. Third, Nexus’s argument that its proposal is “narrowly tailored to avoid First Amendment concerns” is illusory and fails to address the fact that recent negative press expressly included brick-and-mortar enrollment operations. In fact, this recent press only further

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<sup>16</sup> *Id.*

demonstrates that the areas for improvement within the Lifeline program are business-model agnostic.

The Commission also should reject Nexus' proposal to impose an obligation on ETCs to post a compliance bond. Imposing a bond requirement would be difficult for the Commission to manage and unnecessary in light of the existing requirement for ETCs to prove that they are financially and technically capable of offering Lifeline service in compliance with the rules. At its core, Nexus's proposal—like TracFone's proposal—invites the Commission to adopt its business model to the exclusion of its competitors' equally legitimate business models. The Commission should not accept this invitation, and should reject Nexus's proposals.

#### **IV. The Commission Should Adopt the Lifeline Reform 2.0 Coalition's Reform Package.**

In addition to focusing on its database solutions, the Commission should adopt the competitively neutral package of Lifeline reforms proposed by the Lifeline Reform 2.0 Coalition. The Coalition proposes three core measures that lie at the heart of its reform package. First, the Commission should mandate that ETCs review, in person,<sup>17</sup> valid government-issued photo identification at the time of enrollment. In so doing, ETCs will have an opportunity to immediately and definitively confirm an applicant's identity, ensuring that any additional eligibility documentation provided by the applicant actually belongs to that applicant. Second, we agree with TracFone that the Commission should require ETCs to retain copies of the photo identification and proof of eligibility documentation supplied at the time of enrollment.<sup>18</sup> Third,

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<sup>17</sup> In order to preserve competitive neutrality, the Commission may adopt an exception to the in-person component of this requirement for those ETCs that enroll eligible consumers through foreign and domestic call centers or through Internet-based enrollments.

<sup>18</sup> Regardless of whether an agent or employee enrolls a subscriber in-person or via the web, there are risks that bad actors will attempt to abuse the program and that negative press coverage can result. By requiring ETCs to view and retain copies of ID and proof-of-eligibility documentation, the Commission can

the Commission should adopt a rule that ETC employees oversee and review all enrollments either in-person or as a part of the ETC's back-office operations before the ETC activates service or seeks reimbursement from the Lifeline program.

In addition to these core reform measures, the Commission should adopt further enhancements to the enrollment process. For instance, the Commission should mandate that employees and enrollment agents mention other Lifeline providers by name at the time of enrollment. In this way, ETCs will add an extra layer of protection against duplicates until such time that the NLAD is implemented. Once the NLAD is in place, the requirement will no longer be necessary, and the Commission should sunset it. Moreover, the Commission should consider adopting effective oversight and controls for enrollment locations, whether in the field or in brick-and-mortar storefronts. For example, the rules should require ETCs (1) to track the locations of any in-person enrollment and distribution hub; (2) to electronically check-in field representatives; (3) to conduct photo audits of enrollment events; and (4) to perform post-event, back-end audits of enrollment events for any enrollment irregularities.

As an added protective measure, the Commission should expressly prohibit the resale or transfer of handsets used to provide Lifeline service. Although the *2012 Lifeline Reform Order* and the Commission's rules currently prohibit the transfer of the Lifeline subscriber's service, there is no such express prohibition on the sale of the *handsets* themselves. Although the Lifeline program does not subsidize the handsets provided in conjunction with supported wireless service, prohibiting the transfer of handsets would tamp down on misperceptions that have led to negative press about the program.

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significantly reduce the potential for fraud while at the same time documenting proof of end-user fraud in the event that it actually occurs.

The Commission also should require that ETCs provide subscribers with access to live customer service representatives who can timely answer questions about the Lifeline program, terms and conditions of service, and eligibility requirements. In addition to answering subscriber's questions, these customer service representatives should provide subscribers with hassle-free de-enrollment procedures that are not contingent on documentation or handset return. It is important for a subscriber to have the opportunity to de-enroll at any time and for any reason without fear of needing to explain his or her decision. And of course, written de-enrollment should be allowed as well.

Finally, the Commission should require enhanced auditing and reporting requirements for ETCs. First, the Commission should require biennial compliance audits for all providers, not simply new and large providers who meet designated thresholds. For smaller ETCs, the Commission should direct USAC to conduct an in-depth validation ("IDV") of any ETC not subject to independent audits. These audits will promote compliance among all ETCs and will allow the Commission to demonstrate its control over the program and the ETCs within it. Moreover, the Commission should require all ETCs to track and report employee enrollment rejection and approval rates on an annual basis on Form 555 reports. These forms provide an important mechanism for ETCs to demonstrate—and the Commission to monitor—compliance with the Lifeline rules. Further, the statistics gathered through this process will provide important, objective information that can be used to educate the public or refute erroneous reports regarding ETC compliance with the Lifeline enrollment procedures.

The Coalition's common-sense package of reforms will serve as an important complement to the Commission's 2012 and 2013 reforms and continuing efforts to eliminate waste, fraud and abuse from the Lifeline program. Unlike the TracFone petition and the Nexus



proposal, the Coalition's reform package effectively addresses (real and perceived) concerns about fraud in the Lifeline program in a manner that does not favor one legitimate business model over another. As such, the Commission should consider adopting the Coalition's reform package as a means of enhancing compliance controls, improving public perception of the Lifeline program and further minimizing waste, fraud and abuse.

### CONCLUSION

For the reasons outlined above, the Joint Commenters again urge the Commission to reject TracFone's Petition for Rulemaking and reject the proposed rule banning the in-person distribution of handsets in connection with the enrollment of customers for Lifeline service.

By:



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